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Cc:

Subject: RE: Question about a transaction - Potential PTs?

Section 4975(d)(20) provides that an IRA may engage in sales of property, loans and transfers or use of IRA assets with a party in interest (or a disqualified person) who is a party in interest only because the person provides services (or has certain relationships with a service provider), **as long as the IRA receives no less, nor pays no more, than adequate consideration in connection with the transaction.** The exemption does not apply to a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the assets involved in the transaction or provides investment advice with respect to the assets.

Based on the facts below TPH's solely owns an S-Corp that uses the property's building as a and pays nothing for the lease, so therefore the transaction does not appear to qualify for the exemption under section 4975(d)(20) because there was no adequate consideration paid for the use of the property (See the language in bold above.). I think that the use of the property by TPH's solely owned S-Corp and the payment of nothing for the lease is a prohibited transaction under section 4975(c)(1)(D) and (E) of the Code. See the analysis in the attached DOL Advisory Opinion 93-33A (December 16, 1993) and Rollins v. Commissioner, T.C. Memo. 2004-260.